



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF ATTORNEY GENERAL

August 2, 2007

TOM CORBETT  
ATTORNEY GENERAL

FILED  
IN CLERKS OFFICE  
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U.S. DISTRICT COURT  
DISTRICT OF MASS.

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VIA – UPS OVERNIGHT MAIL

The Honorable Patti B. Saris  
United States District Court for the  
District of Massachusetts  
U.S. Courthouse  
One Courthouse Way, Suite 2300  
Boston, MA 02210

01-CV-12257-PBS

Re: Civil Action No. 02-9236 & 03-5425

Dear Judge Saris:

The Commonwealth of Pennsylvania has two concerns with your referral of our claims in the above litigation. Our concerns do not rise to the level of an objection. We are prepared to go forward with mediation if our concerns are addressed. As you noted in the final group hearing regarding the Glaxo Smith Kline settlement, the AWP litigation is extremely complex and has significant risks. While we generally support efforts to resolve this complex litigation, we make the following suggestions to address our concerns.

First, our action was originally filed in the Commonwealth Court of Pennsylvania and we do not want participation in mediation to constitute a waiver of our motion for remand presently before you. Second, the Commonwealth has not had any settlement discussions with most of the defendants. Thus, I am concerned that starting mediation in a vacuum will not be productive.

I have two suggestions to address both of the concerns.

The Honorable Patti B. Saris  
August 2, 2007  
Page - Two

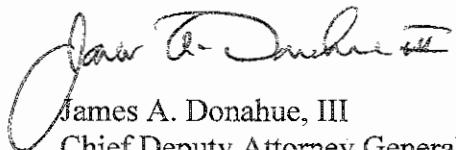
On the issue of waiver, we request that you require the defendants stipulate that participation in the mediation with the Pennsylvania Office of Attorney General does not constitute a waiver or estoppel which would prevent remand of Pennsylvania's claims to Pennsylvania state courts should the mediation fail. Our remand motions could be defeated by participation in litigation process before this court. Harris v. Edward Hyman Co., 664 F.2d 943 (5<sup>th</sup> cir. 1981).

Second, as a prelude to mediation, I suggest that you order us and the defendants to put demands and offers on the table with support for their respective positions by specific dates prior to convening mediation. Then give us a modest amount of time to determine if we can reach an agreement.

Then any unresolved matters would be referred to Professor Green. Professor Green would be in a position to close gaps in the parties' position or in a position to conclude that the differences between the parties' positions are so great that mediation at this time would be wasteful.

Thank you for your consideration of our concerns.

Very truly yours,

  
James A. Donahue, III  
Chief Deputy Attorney General  
Antitrust Section

JAD:II/dmh/Saris080207.ltr

cc: Counsel of Record